



Philip R. Sellinger
Tel (973) 360-7910
Fax (973) 301-8410
sellingerp@gtlaw.com

MEMO ENDORSED

Within the confines of the
discovery schedule the Court
has already set, the parties
should meet and
confer on a
discovery plan
to be submitted
by Jan 17, 2014.
SO ORDERED
1-6-14

January 6, 2014

VIA ECF

The Honorable P. Kevin Castel
United States District Court for the
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 1-7-14

Re: *In Touch Concepts, Inc. v. Celco P'ship*
13 Civ. 1419 (PKC)

Dear Judge Castel:

We write with respect to the December 31, 2013 letter from counsel for Plaintiff In Touch Concepts, Inc., d/b/a ZCom ("ZCom") seeking permission to move for recusal of Your Honor pursuant to 28 U.S.C. § 455(a), and Your Honor's January 2, 2014 Order setting a briefing schedule for that motion. While Verizon Wireless respects Your Honor's determination to consider the proposed recusal motion on a full record, it also considers the motion to be frivolous.

In brief, the proposed motion is premised entirely on Your Honor's alleged partiality to Verizon Wireless. Yet, recusal is entirely inappropriate where, as here, the basis for the claim rests not on any extrajudicial conduct, but solely on allegations that the Judge has consistently ruled adversely to the movant, *see, e.g., United States v. Carlton*, 534 F.3d 97, 100 (2d Cir. 2008); *Schiff v. United States*, 919 F.2d 830, 834 (2d Cir. 1990), or that the case has not been administered "fairly" from the movant's perspective. *See Liteky v. United States*, 510 U.S. 540, 556 (1994). Permitting recusal on the grounds urged by ZCom would invite Judge shopping and endless re-litigation of the very same motions and procedural arguments that ZCom has made throughout the case, and would thus undermine the integrity of the judicial process.

While disappointed that ZCom has chosen to consume its and the Court's time with an application of this nature, should ZCom choose to file the motion, Verizon Wireless will respond more fully pursuant to the schedule Your Honor has set. Verizon Wireless also reserves its rights to seek further relief relating to frivolous submissions.

ALBANY
AMSTERDAM
ATLANTA
AUSTIN
BOSTON
CHICAGO
DALLAS
DELAWARE
DENVER
FORT LAUDERDALE
HOUSTON
LAS VEGAS
LONDON*
LOS ANGELES
MEXICO CITY*
MIAMI
MILAN**
NEW JERSEY
NEW YORK
ORANGE COUNTY
ORLANDO
PALM BEACH
COUNTY
PHILADELPHIA
PHOENIX
ROME**
SACRAMENTO
SAN FRANCISCO
SHANGHAI
SILICON VALLEY
TALLAHASSEE
TAMPA
TYSONS CORNER
WASHINGTON, D.C.
WHITE PLAINS

The Honorable P. Kevin Castel
January 6, 2014
Page 2

Finally, may we assume that Your Honor no longer requires the parties to submit on January 10 a proposed Civil Case Management Plan and Scheduling Order now that the Court has set discovery and dispositive motion deadlines in lieu of holding a pretrial conference?

Respectfully submitted,

/s/ Philip R. Sellinger

PHILIP R. SELLINGER

cc: All Counsel of Record (via ECF)